



# City of Seattle

Seattle Police Department

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April 10, 2015

Director Pierce Murphy  
Office of Professional Accountability  
720 Third Avenue, 18th floor  
Seattle, WA 98104

RE: OPA Management Recommendations 9/26/14 Special Report; 2014-0095; 2014-0132; 2014-0358; 14-0128.

Dear Director Murphy:

I write to update you on department actions taken in response to the OPA Management Recommendations that you transmitted over the last six months. Overall, the department has developed systemic changes to address the concerns set forth in your recommendations.

**Special Report on Overtime, received September 26, 2014:** OPA recommended that SPD 1) develop adequate leadership, management oversight, supervisory control, and robust procedures to enforce budget compliance; 2) that the Chief of Police formally invite the City Auditor to conduct an audit of ETS overtime; and 3) that the department implement the recommendations by the City Auditor.

In response, on September 30, 2014, I requested that the City Auditor conduct an audit of the Education and Training Section. Additionally, on October 3, 2014, I requested that the City Auditor expand the scope of that audit to include all overtime expenditures for the Seattle Police Department. Since then, department staff have been working closely with the City Auditor to implement in-process recommendations.

Additionally, internally, we have made many proactive management changes to ensure better controls on overtime spending. We have implemented SeaFin, which is a bi-weekly financial health meeting for the organization. Using available data, this process allows executive oversight of spending on a close to real-time basis (data represent approximately two weeks in the past). Additionally, every Captain and above have been trained in Summit, the accounting software for the department. This allows commanders to search and analyze their overtime spending as well as their operational expense budget. Captains are also provided monthly summaries of where they stand in relation to their overtime budgets. For the first time, Captains have been provided with the experience and capacity to monitor their budgets.

Finally, the department continues to explore different technological options to increase the real-time capacity to not only monitor overtime spending and overall budgets, but also to track a wide variety of employee productivity data.

**2014-0095 Chain of Command Review of Force Deadlines, received November 6, 2014:**

OPA recommended that the timelines set forth in the Use of Force Policy (Title 8) for chain of command review of force be clarified to ensure that "reviews are either completed before a supervisor goes on leave or, in the case of an unplanned absence of a supervisor, are conducted by a another supervisor of the same rank."

The Department agrees with this recommendation. In response, SPD has drafted an updated UOF policy (currently under review by the Monitoring Team and the Department of Justice), which addresses the timeliness issue as follows:

For all reviews, furloughs, vacations, extended sick leave or any other absence from work are not considered valid reasons for delaying the review process. Each level of review is expected to have a sufficient number of personnel trained in the review process to sustain the review process in a timely manner. In the case of absences from work, the reviewer or his or her designee will assign another supervisor to complete the review of the use-of-force report.

This requirement will apply to all reviewers of force (e.g., FIT), not just the chain of command. As such, the department believes this addresses your concerns in full.

**2014-0132 Live and Photographic "Line-ups" Policy, received December 23, 2014:** OPA recommended developing a policy to govern live and photographic line-ups.

The department agrees with this recommendation and APRS is drafting a policy (SPD Manual 15.170), which is currently under internal review with subject matter experts. Additionally, SPD detectives are part of the King County Eyewitness Working Group (KCEWG). Other group members are Lara Zarowsky of the UW law school's NW Innocence Project; Professor Stephen Ross-an expert in witness ID issues-from the UW Tacoma Campus; Mark Larsen, Chief Deputy for the King County Prosecutor's Office; Chief George Delgado of the Des Moines Police Department.

I also ordered that the policy not only cover live and photographic line-ups, but also provide direction on show-ups and identifications that occur out in the field. Some of the information that will be integrated into 15.170 was included in the November 5, 2014, Training Digest, which is attached.

I will forward the draft policy once a completed draft is available.

**2014-0358 SeaPark Parking Policy, received February 13, 2015:** OPA recommended that the SPD Manual be amended to provide clear guidance to employees concerning where they may or may not park in the SeaPark garage.

The Department agrees with this recommendation. In response, I directed APRS to clarify the policy, which is attached. Once approved through all channels, this will be published.

**2014-0128 Court Appearance Control, received November 4, 2014:** OPA recommended developing a policy or procedure to provide feedback to supervisors and the department when officers miss court appearances.

The department agrees with this recommendation and has taken several steps to improve feedback. First, the Legal Unit and IT are developing a "Legal Track" system for subpoenas received by the department. The subpoenas will be scanned in and attached to an automatic email system. The officer will receive an email with the subpoena and an option to acknowledge that they will attend the court date. If no acknowledgement is received, a second email will be automatically generated to the officer and to his/her supervisor. If no acknowledgement is received, the legal unit will follow up with the officer telephonically. As part of this system, an email will be sent to the court coordinators in the various courts reporting weekly on expected court appearances and giving the opportunity to indicate any missed appearances.

Second, APRS and the Legal Unit is revising SPD Manual 5.190, Court Appearances and Legal Proceedings, which is completely out of date and provides incorrect information throughout.

Third, once complete, SPD Manual 5.190 will be transmitted to the various courts so that the administrators know the rules and expectations for SPD employees.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen O'Toole".

Kathleen O'Toole  
Chief of Police

KT:bm:cv



# Seattle Police Department Training Digest

**TD14-00020**

## **Line-ups, Photomontages & Show-ups**

November 5<sup>th</sup>, 2014

Formerly P&T 044

Last updated: 5/1/2009 by the Criminal Investigations Bureau

### **Overview**

The most important step in establishing probable cause is often the positive identification of a suspect by a victim or witness. The manner in which the identification procedure is prepared, conducted, and documented can affect the reliability, fairness and objectivity of the identification. Attention to these details will assure a sound identification that will stand up to legal challenges.

**Composition:** A preparation resulting in a photomontage or line-up in which the suspected subject does not unduly stand out.

**Witness Instructions:** Instructions provided to the witness prior to presentation of a line-up, photomontage, or show-up will likely improve the accuracy and reliability of any identification obtained from the witness and can facilitate the elimination of innocent parties from the investigation.

**Conducting the Identification Procedure:** Identification obtained through a carefully choreographed photomontage, line-up, or show-up using suggestions outlined in this manual section will strengthen their evidentiary value.

**Documenting the Process:** Preparing a complete and accurate record of the outcome of the identification procedure strengthens the credibility of the results. This record is a critical part of the investigation and any subsequent court proceedings.

Use of the following suggestions regarding identification procedure preparation, witness instructions, and the actual presentation can minimize the potential effect of external influences on a witness's memory and confidence.

### **Pre-Identification Procedures**

#### **Composing Line-ups and Photomontages**

**Principle:** Fair composition of line-ups and photomontages enable witnesses to provide more accurate identification or non-identification.

**Policy:** The investigator shall compose the line-up or photomontage in such a manner that the suspect does not unduly stand out.

**Procedure:** In composing a line-up or photomontage, the investigator should:

- I. Include only one suspect or suspect photo in each identification procedure.



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- II. Select fillers based on one of the following criteria (a "filler" is a person who fits the general physical description as the person suspected of the crime being investigated):
  - A. When there is an adequate description of the suspect provided by the witness, select fillers who generally fit that description; or
  - B. When there is a limited or inadequate description of the suspect provided by the witness, or the description differs significantly from the suspect, select fillers who resemble the suspect in significant features.
- III. Include a minimum of five fillers (non-suspects) per identification procedure.
- IV. Complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
- V. Create a consistent appearance between the suspected subject and the fillers with respect to any unique or unusual feature such as a tattoo or scar that was used to describe the suspect. This should be done by digitally adding or concealing that feature on all of the photos in a photomontage, and concealing such a significant feature during a line-up.
- VI. Consider placing the suspected subject or their photo in different positions in each line-up or montage, both across cases and with multiple witnesses in the same case. Position the suspect or suspect photo randomly in the identification procedure.
- VII. When showing a new suspected subject, do not reuse fillers in presentations to the same witness.

## **Procedures unique to line-ups:**

- I. Position the suspected subject randomly. Consider honoring the suspect's or his attorney's request to be in a particular position. (Washington State law does not require law enforcement investigators to honor defense requests regarding the positioning of a subject in identification procedures. State vs. Favro, 5 WN APP#11 1971)
- II. The fillers will be admonished to follow explicit instructions and to do nothing to attract attention to themselves or others during the line-up presentation.

## **Procedures unique to photomontages:**

- I. If multiple photos of the suspect are reasonably available, the investigator should select a photo that resembles the suspect description or appearance at the time of the incident.
- II. Prior to presenting a photomontage to a witness, the investigator should critically view the montage to ensure that the suspected subject does not unduly stand





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out. (This may be accomplished by presenting the montage to a coworker unfamiliar with the case to determine if they are able to select the subject.)

- III. The investigator should preserve and document the order of the photos used in the montage presentation.

### **Instructing the Witness Prior to Viewing a Line-up or Photomontage**

**Principle:** Instructions given to the witness prior to viewing a line-up or photomontage can facilitate an identification or non-identification based on their own memory.

**Policy:** Prior to presenting a photomontage or line-up, the investigator should provide instructions to the witness to ensure that they understand the importance of the identification procedure to exculpate the innocent as much as to identify the suspect.

**Procedure:** Prior to presenting a line-up or photomontage, the investigator should instruct the witness that:

- I. They will be viewing a group of photos or subjects.
- II. It is just as important to clear innocent persons from suspicion as to identify guilty parties.
- III. Photos of the person, or the subject themselves may not appear exactly as they did on the date of the incident. Officers should remind the witness or victim that hairstyles and facial hair can easily be changed.
- IV. The person or the photo of the person who committed the crime may or may not be present.
- V. (Sequential line-ups and photomontage only) the investigator should provide the following additional instructions to witnesses:
  - A. Individual persons or photos will be viewed one at a time.
  - B. The people in the group or the photos are in random order.
  - C. A victim or witness should take as much time as needed making a decision about each person or photo before moving to the next.
  - D. All persons or photos will be presented, even if an identification is made.
- VI. Regardless of whether or not an identification is made, the police will continue to investigate the incident.
- VII. The procedure suggests the investigator ask the witness to describe how certain they are in their identification.

### **Suggested instruction to be recited to witnesses viewing photomontages:**

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime



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now being investigated. Keep in mind that hairstyles, beards and mustaches may easily be changed. Also, photographs may not always depict the actual complexion of a person – it may be lighter or darker than shown in the photo. Pay no attention to the type or style of the photographs. You will be given the opportunity to observe all of the photographs. Take as much time as you need to look at any or all of the photos. If you see the person who committed the crime now being investigated, identify them to me.”

(Additionally, with **sequential photomontages**: “The photos will be presented one at a time and in random order. If you observe the photo of the person who committed the crime before I have finished showing you all of the photos, identify that person to me. However, I will continue showing you the remainder of the photos. Please, examine them as well.”)

“I will ask you to state in your own words how certain you are of the identification you made.”

## **Conducting Identification Procedures**

Principle: The identification procedure should be conducted in a manner that promotes the reliability, fairness, and objectivity of the witness's identification.

Policy: The investigator shall conduct the identification procedure in a manner conducive to obtaining accurate identification or non-identification decisions and shall employ procedures that avoid prejudicing the witness.

## **Conducting the Photomontage (Sequential and Simultaneous)**

Procedure: When presenting a photomontage, the investigator should:

- I. Provide viewing instructions to the witness as outlined on the previous page, Section B., “Instructing the Witness Prior to Viewing a Line-up or Photomontage.”
- II. Confirm that the witness understands the nature of the photomontage procedure.
- III. **(Sequential photomontage only)** Confirm that the witness understands the nature of the sequential procedure.
- IV. **(Sequential photomontage only)** Present each photo to the witness separately, in a previously determined order, removing the one previously shown.
- V. Avoid saying anything to the witness that may influence their selection.
- VI. Avoid letting the witness know anything regarding the individual until after they have made a statement of certainty, if identification is made.
- VII. Record any identification results and witness statement of certainty as outlined on page 6, Section A “Documenting Line-up and Photomontage Results.”
- VIII. Document (in writing) the photomontage procedures, including:
  - A. Identification information and sources of all photos used.



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- B. Names of all persons at the photomontage presentation.
- C. Date and time of the identification procedure.
- IX. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

## **Line-up Procedure**

### **Officers conducting line-ups should:**

- I. Contact the Robbery Unit to verify that a line-up room is available. If so, the schedule should be marked.
- II. Verify that the suspect is in the King County Jail (KCJ-Seattle). If they are at the Regional Justice Center (RJC-Kent), officers need to contact staff at that facility to have them transported to KCJ.
- III. Contact the suspect's attorney or Public Defender Association (206-447-3900) and advise of the pending line-up. This is usually done the day before the line-up is to take place.
- IV. Contact KCJ and determine where the suspect is located in the jail. Consider calling the jail early and have staff transport the suspect to Intake & Release (ITR) located on the third floor.
- V. Obtain line-up chains from the Robbery Unit.
- VI. Proceed through the tunnel to KCJ, along with at least one other officer and the chains. The elevator to the tunnel is located outside the interview rooms near the Homicide Unit (7th Floor HQ building) The tunnel is located on the lower level (LL) of the HQ building. Detectives going to KCJ need to be unarmed and readily identifiable in police clothing. A pre-programmed prox-card is required for access.
- VII. Advise SMC Marshalls that SPD is there to pick a line-up. Proceed to the jail, pushing the silver button near each door to alert KCJ staff that a request for entry is being made.
- VIII. Take the elevator to the 3rd floor and contact the ITR desk. Advise the staff that an SPD line-up is to be conducted, the crime being investigated, and the description of the suspect. KCJ staff will advise where in this facility possible "fillers" may be located. Staff will take into account the type of crime (misdemeanor/felony) and the level of violence. SPD doesn't typically combine misdemeanor and felony inmates, and officers should be aware that there are degrees of violence, even among felony suspects. The most violent of offenders are not intermingled with felony suspects arrested for a lesser degree of violence.
- IX. Take the suspect to the floor for filler selection.





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- X. Contact the corrections officer in the wing the suspect is housed in. Request 'fillers' for the line-up and provide the general description of persons needed for the line-up. Staff will provide an inmate book with photos and descriptions of all prisoners in that wing of KCJ. To encourage participation among inmates, officers can offer cigarettes, soft drinks, coffee, candy bars, etc.
- XI. Once a line-up has been fulfilled with the suspect and five 'fillers', investigators should handcuff them to the chain and transport them to the 3rd floor to be checked out at the ITR desk. Once scanned by KCJ staff, take the elevator to the 2nd floor, back through the tunnel to SPD HQ, 7th floor.
- XII. Officers can unhandcuff all the inmates and secure them in the holding room next to the elevator (outside the line-up room). This is the time for the inmates to consume food, beverages or cigarettes while the victim and witnesses are organized and briefed in the line-up room. Printed instructions are available in the Robbery Unit office. After the defense attorney has arrived, officers should provide them access to their client and a private interview room.
- XIII. Brief all the inmates on the line-up procedure. Advise them on expected behavior, including what they will say or wear. The suspect or their attorney may be allowed to decide where in the line-up the suspect will be. Once the order of the line-up has been decided, provide a number that the inmates will wear around their necks (#1-6). Note this information on an SPD Line-up Information Sheet, (form 9.30.1)
- XIV. Brief the "Line" on any last details. The line-up supervisor is usually a Robbery or Homicide sergeant and will conduct the line-up. The line-up should then commence.
- XV. After the line-up process has been completed and the line has been returned to the holding room, conduct witness interview(s) using the SPD Line-up Identification Sheet, (form 9.30)
- XVI. Return the inmates to KCJ, after completion of the steps listed above. No food, beverages, or cigarettes are allowed to be taken back into jail. Verify that all items are consumed beforehand. Check the inmates back into KCJ at the ITR on the 3rd floor before the inmates are returned to their respective floors.
- XVII. Instruct all witnesses not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

### **Line-up Considerations:**

#### **I. Picking the Line**

Factors to be considered in selecting the line-up 'fillers' include assessing what descriptions were provided by witnesses. If there are multiple witnesses or multiple cases, investigators should make note of the range of the physical attributes and work within those parameters. Investigators should keep in mind that the line-up needs to be



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fair and reasonable. Heavy accents, speech impediments, physical handicaps, tattoos, etc. should be considered when making selections.

## II. Conducting the Line-up

There are typically two ways to conduct a line-up: Traditional (with all six subjects at the same time) or Sequential (one subject at a time). Both are accepted practices. In either case, should a witness wish to see any part of the line-up repeated, the entire line must be repeated. The most common line-up is the Traditional. If props are used (such as hats, glasses, etc.), each subject will don the prop(s), say or do a simple task per line-up instructions, then pass the prop(s) along to the next subject. This continues until all the subjects have performed the task.

Note: When asking the subjects to repeat a phrase, ensure that the phrase is brief in nature. Investigators should poll witnesses, review reports and statements to determine what, if anything, the subjects will say during the line-up.

## III. The Line-up Staff

- A. This staff consists of a supervisor, the lead detective and at least two other detectives in the line-up room.
- B. Photographer to photograph the line-up process. (Additional videotaping is an option.)
- C. Minimum of two detectives in the line-up holding room.
- D. Detectives available to assist with the post line-up interviews.
- E. Having TASER-trained officers present is an option. Typically inmates are cooperative, but investigators should always keep "officer safety" in mind when dealing with individuals suspected of a crime.

### Attorney's role at the line-up:

- I. Reference State v. Favro, 5 WN. APP #311, (1971) "Counsel for the accused is a silent observer at the proceedings who can later recall his observations for purposes of cross-examination and act in the capacity of a witness to what transpired. The goal is to detect any unfairness in the confrontation between the witness and the accused and to insure that any suggestion made at that time by the law enforcement officer, either intentionally or unintentionally, is observed..."
- II. The attorney will not badger or question witnesses, officers, or detectives.
- III. The attorney's recourse to what they may consider improper or unlawful will be the court in which their client is charged.
- IV. The sergeant will note any objections raised, or lack of objections, in the follow-up report.
- V. The policy of allowing attorney access to the subject holding area to talk with their client and to advise the suspect's position in the line-up is not a legal



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obligation of the Department. If the person in charge of the procedure deems it advisable to allow such access, it should be brief. If counsel causes any undue delay or disruption as a result of being afforded this consideration or if a security problem exists, the privilege will be revoked immediately. The defense counsel will then be allowed to witness the line-up as a silent observer only.

## **Conducting the Show-up**

**Principle:** When circumstances require the prompt display of a single suspect to a witness it can provide important investigative information at an early stage. Procedural safeguards can effectively minimize the inherent suggestiveness of the encounter.

### **When conducting a show-up, the investigator should:**

- I. Determine and document, prior to the show-up, a description of the suspect.
- II. Transport the witness to the location of the detained suspect to limit the legal impact of the suspect's detention.
- III. Attempt to obtain the suspect's cooperation in the show-up procedure by requesting that they volunteer to be subjected to detainment and to participate in the show-up. Document the suspect's cooperation or lack of.
- IV. When multiple witnesses are involved:
  - A. The investigator should separate witnesses and instruct them to avoid discussing details of the incident with other witnesses.
  - B. If a positive identification is obtained from one witness, the investigator should consider using other identification procedures (e.g., line-up, photomontage) for remaining witnesses.
- V. Caution the witness that the person they are looking at might or might not be the suspect.
- VI. Obtain and document a statement of certainty for both identifications and non-identifications.

## **Documenting Identification Procedure Results**

### **Documenting Line-up and Photomontage Results**

**Principle:** The record of the outcome of the identification procedure should accurately and completely reflect the identification results obtained from the witness.

**Policy:** When conducting an identification procedure, the investigator shall preserve the outcome of the procedure by documenting any identification or non-identification results obtained from the witness.

**Procedure:** When conducting an identification procedure, the investigator should:



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- I. Photograph:
  - A. All line-up participants, including suspect and fillers.
    1. Photographs should, at a minimum, depict the individuals facing front, half right, and half left.
    2. Additional photos may be taken throughout the line-up process at the discretion of the case detective.
    3. Videotaping is an option. Note: Videotaping a line-up should commence once the "Line" enters the line-up room. Only the "Line" is to be videotaped. Videotaping of a photomontage presentation should commence at the presentation of the admonishment. If there is to be audio recording included during the videotaping of either type of presentation, an advisement must be made to all in attendance per Washington State law. If there is an objection by anyone present, this option will be precluded.
  - B. Persons viewing the process, including attorneys, in the position they will occupy during the line-up.
- II. Record identification or non-identification in writing, including the witness's own words regarding certainty.
- III. Ensure results are signed and dated by the witness.
- IV. Ensure that no materials indicating previous identification results are visible to the witness.
- V. Ensure that the witness puts no marks on any materials that will be used in other identification procedures.

## **Documenting Show-up Results**

**Principle:** The record of the outcome of the field identification procedure accurately and completely reflects the identification results obtained from the witness. It improves the strength and credibility of the identification or non-identification results obtained from the witness and can be a critical document in the investigation and any subsequent court proceedings.

**Policy:** When conducting a show-up, the investigator shall preserve the outcome of the procedure by documenting any identification or non-identification results obtained from the witness.

**Procedure:** When conducting a show-up, the investigator should:

- I. Document the time and location of the show-up.
- II. Record both identification and non-identification results in writing, including the witness's own words regarding how certain they are.





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- III. Include investigator's observation regarding the manner in which the identification occurred (e.g., immediate recognition of the identified individual, time taken to make identification, etc.).